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STAFF REPORT: Planning & Building Services Department



REPORT TO: Council
MEETING DATE: August 26, 2013
REPORT NO.: B.13.29
SUBJECT: "2295887 Ontario Inc. (Maiolo's)", 15 Harbour Street – Noise By-law Relief Request
PREPARED BY: Sharon Long
 Administrative Assistant, Planning & Building Services

A. Recommendations

THAT Council receive Staff Report B.13.29 respecting "2295887 Ontario Inc. (Maiolo's)", 15 Harbour Street – Noise By-law Relief Request and provide direction with respect to the request.

B. Background

The Town is in receipt of a request from the Operator of the subject premises for relief from the provisions of the Noise By-law (Attachment 1) on various dates and times.

By-law Enforcement has received one complaint related to noise this year to-date.

Section 3 e) of the Noise By-law permits the making of noises or sounds related to the non-residential use of land permitted by a by-law enacted by the municipality pursuant to the applicable Zoning By-law from 07:00 to 19:00.

It is noted that outdoor events in themselves outside of 07:00 to 19:00 are not prohibited. The making of noise is prohibited in the instance where such events are likely to disturb the peace, quiet, comfort or repose of any inhabitant.

In accordance with the procedures set out in our Policy & Procedures for Noise By-law Relief Requests, the residents within 60 metres were circulated. This is to confirm that no responses were received from this circulation.

We did receive 2 letters back from residents which respect to this request which are attached for your information (Attachment 2 & 3).

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Environmental Impacts

N/A

E. Financial Impact

N/A

F. In Consultation With

N/A

G. Attached

1. Copy of the letter from Maiolo's Restaurant dated June 22, 2013.
2. Letter from resident attached.
3. E-mail from resident attached.
4. Office Consolidation of the Noise By-law.

Prepared by:

Respectfully submitted,

Sharon Long
Administrative Assistant
Planning & Building

Greg Miller
Manager, Building & By-law/
CBO

David Finbow
Director, Planning &
Building Services

Subject: Maiolo's Restaurant

Hi Carina

We would like to put in a request to allow Maiolo's Restaurant 15 Harbour St. Thornbury Ontario to play music on our outdoor patio as many of our local customers enjoy dining at our restaurant by the bay and enjoy the music as they dine.

We are asking for the following dates from July 24/13 to Sept. 30.13 from 11:00am to Midnight.

Please contact me @ 416-832-2647 Francesco Maiolo

Awaiting for your reply,
Thanking you in advance

Francesco Maiolo

[Redacted]

Gowanus, Ontario

August 1, 2013

RECEIVED

AUG 02 2013

TOWN OF THE BLUE MOUNTAINS
PLANNING & BUILDING SERVICES
PER [Signature]

Sharon Long
Town of Blue Mountains
32 Mill Street
Gowanus, Ontario

Dear Sharon Long

Just recently I have enjoyed the peace, tranquility and view from [Redacted] The trucks are gone, at last! How many times did my family ask for help in having the trucks moved from Gowanus's main street? What help did we get?

Now Maiolo's wants an exemption of the Town's Noise By-law. There are the cars going to park. There isn't room now and cars are parked anywhere. My driveway has been blocked, a few times.

I am not adverse to people having a good time but noise pollution, NO!!!

Yours very truly

Helen M. Prodzinas

Sharon Long

From: [REDACTED]
Sent: August-17-13 5:09 PM
To: Sharon Long
Subject: Maiolos

Members of Council

This is my response to the Noise By-law Exemption Request on behalf of Maiolos, 15 Harbour Street, Thornbury. As you may well be aware, my property, the former Coal Shed, on Bruce Street, had been used by our business, SOS Storage On Site, for the parking of our trucks. Due to noise and other concerns, we relocated the equipment to Thornbury Storage premises, all to mitigate noise concerns with our neighbours.

Now we are being asked to consider a noise exemption for "Maiolos".

Obviously, we are not in favour, neither is the tenant at [REDACTED] who is currently on vacation. Additionally, we have a substantial concern with parking on Huron Street.

Frequently, clients of Maiolos park on the grass boulevard in front of

[REDACTED] and when it rains, the boulevard is chewed up and mud tracked onto the road and driveway. The parking at Maiolos, across the road, would appear to contravene Town by-laws as the former "Largo" owner, placed paving stones on the road allowance thus creating a visual nuisance. Three coniferous trees were recently cut down and never replaced along the cedar grouping which offered some relief from the actual parking lot at Maiolos. It may also be appropriate to note the occupant of 13 Huron Street is affiliated with Maiolos and thus may be prejudicial to the by-law request. In summary, Maiolos does not have enough on-site parking and must rely on street parking to accommodate their business interests and the occupants of property directly opposite Maiolos are very much against and Exemption of the Noise By-law for 15 Harbour Street. P.S, I am sure Council does not want to re-visit the type of noise problems previously noted with other restaurants in the Town,

Yours truly;

Anne Bochna

[REDACTED]
and Carol Reinards (tenant)

CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

BY-LAW 2002 – 9

Office Consolidation
(By-laws 2002-60 & 2004-16)

Being a By-law to prohibit or regulate noises within the municipality likely to disturb.

WHEREAS Section 210 (138) of the *Municipal Act*, chap. M.45, R.S.O. 1990 and amendments thereto enables the councils of local municipalities to pass by-laws for prohibition or regulation within the municipality of noises likely to disturb the inhabitants;

AND WHEREAS section 61 of the *Provincial Offences Act*, chap. P.33, R.S.O. 1990 and amendments thereto provides for a general maximum penalty upon conviction not to exceed \$5,000.00;

AND WHEREAS it is deemed expedient to pass a by-law for the prohibition or regulation of noise within the municipality in a format that would allow enforcement by both a Municipal Law Enforcement Officer and the Ontario Provincial Police;

NOW THEREFORE the Council of the Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. THAT no person shall make noise or cause noise to be made or permit noise to be made that would be likely to disturb the inhabitants of the municipality.
2. THAT for the purposes of Section 1, the following noises or sounds, among others, shall be deemed likely to disturb the inhabitants of the municipality:
 - (a) The sound or noise from, or created by, any radio, television, phonograph, or any other electronic device, or any musical or sound producing instrument of whatsoever kind when such radio, television, phonograph, device or instrument is played or operated in such a manner or with such volume likely to disturb the peace, quiet, comfort or repose of any inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel, or any other type of residence.
 - (b) The yelling, shouting, hooting, whistling, singing, or any other sound made by an individual in such a manner which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence.
 - (c) The operation of construction vehicles or the act of construction between the hours of 19:00 hours of any weekday to 07:00 hours of the next weekday save and except Saturday from 08:00 hours to 13:00 hours which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence, unless written permission to specifically extend or alter the hereinbefore mentioned time periods has been given in writing by Council.

- (d) The sound from the operation of any powered or non-powered tool, for domestic purposes (other than snow removal) which is operated in such a manner likely to disturb the peace, quiet, comfort or repose of any inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence, between the hours of 23:00 hours of one day to 07:00 hours of the next day (09:00 hours on Sundays).
- (e) The persistent noise made by any domestic pet, or any animals kept for commercial purposes, likely to disturb the peace, quiet, comfort, or repose of any inhabitant in the same building or in the neighbourhood, at any time.
- (f) The grating, grinding, rattling noise or any other noise caused by a condition of disrepair or maladjustment of any motor vehicle or other vehicle whatsoever or part or accessory thereof likely to disturb the peace, quiet, comfort or repose of any other inhabitant within the municipality.

3. THAT this By-law does not affect:

- a) Any bona fide agricultural use or practice engaged in by a bona fide farmer or employee thereof.
- b) The operation of snow-making machinery or snow-grooming vehicles.
- c) The operation of snow-removal equipment.
- d) Noises or sounds authorized by the municipality. (By-law No. 2002-60)
- e) Noises or sounds related to the non-residential use of land that is permitted by a by-law enacted by the municipality pursuant to Section 34 of the *Planning Act* between the hours of 07:00 hours and 19:00 hours. (By-law 2002-60)
- f) Noises or sounds related to the non-residential use of land that is permitted pursuant to the regulations made under the *Niagara Escarpment Planning And Development Act* between the hours of 07:00 hours and 19:00 hours. (By-law 2002-60)
- g) Noises or sounds authorized by the Blue Mountain Village Association originating within the "Village at Blue Mountain" (Parts 1-40, 16R-7451) between the hours of 07:00 hours and 23:00 hours. (By-law No. 2002-60)
- h)** Noises or sounds related to the use of lands known as Part of Lot 5 and Part of Lot 6, Concession 8, Roll No.: 7-046-02, by the Blue Ridge Sportsmen's Club Inc. between the hours of 08:00 and 21:00 on any day, subject to any Provincial or Federal Statute or Regulation with regard to the discharge of firearms and/or weapons. (By-law 2004-16)

4. THAT every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a penalty as provided in the *Provincial Offences Act*.

5. THAT should any section, clause or provision of this By-law be declared by a court of a competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or in part hereof, other than the part which was declared to be invalid.

6. THAT Township of Collingwood By-laws No. 92-28, 95-37 and 96-9, Town of Thornbury By-law No. 20A-1983 and Town of The Blue Mountain By-law No. 2000-44 are hereby rescinded and repealed.

Read a first and second time this 28 day of January, 2002.

Read a third time and passed this 28 day of January, 2002

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Ross Arthur, Mayor

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Stephen Keast, Clerk